

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

CARL OEDER & SONS SAND & GRAVEL
CO., A DIVISION OF OEDER & SONS
GARAGE INCORPORATED and

TIMOTHY BROWNING,

Plaintiffs,

vs.

VILLAGE OF SOUTH LEBANON, OHIO,

JAMES SMITH, and

JOHN LOUALLEN,

Defendants.

Case No. 1:01CV823
District Judge Susan J. Dlott

**AGREED JUDGMENT ENTRY
AND
CONSENT DECREE**

WHEREAS, Plaintiffs initiated the within action seeking declaratory judgment, injunctive relief, and other damages against Defendants, Village of South Lebanon, Ohio, James Smith, Mayor of the Village of South Lebanon, Ohio, and John Louallen, Village Administrator of the Village of South Lebanon, Ohio, concerning Ordinance No. 2001-12 adopted on or about July 18, 2001 by the Village Council of South Lebanon, Ohio, and entitled "An Ordinance Restricting Vehicles on Public Streets within the Boundaries of the Village of South Lebanon, Ohio, and Fixing a Penalty";

WHEREAS, previously, Plaintiff Carl Oeder & Sons Sand & Gravel Co., a division of Oeder & Sons Garage Incorporated, commenced a separate action in the Court of Common Pleas of Warren County, Ohio, captioned "Jimmy Amburgy, Kevin Hill, David McCabe, James Pottorf, and Carl Oeder & Sons Sand & Gravel, a division of Oeder & Sons Garage Incorporated, Plaintiffs, vs.

Village of South Lebanon, Ohio,” Case No. 01 CV 58008, to challenge the constitutionality of Ordinance 2000-15 adopted on or about November 16, 2000, by the Village Council of South Lebanon, Ohio which was entitled “An Ordinance Restricting Vehicles on Public Streets within the Boundaries of the Village of South Lebanon, Ohio and Fixing a Penalty”, which the Court of Common Pleas of Warren County, Ohio, declared unconstitutional;

WHEREAS, on or about June 5, 2002, Defendant Village of South Lebanon, Ohio adopted Ordinance No. 2002-06, which became effective July 5, 2002, and which effectively re-established the truck route through the Village of South Lebanon and repealed the prior Ordinances;

WHEREAS, Plaintiffs have claims for money damages against Defendants that have remained pending in this Court and in the aforesaid state court action;

WHEREAS, United States District Judge Susan J. Dlott ordered court-conducted mediation in this case and designated United States Magistrate Judge Sharon L. Ovington as the mediator;

WHEREAS, United States District Magistrate Judge Sharon L. Ovington conducted the court-ordered mediation on November 18, 2003, at which time the issues pending in both the within action and the aforesaid state court action were mediated;

WHEREAS, as a result of this mediation, the parties to this case and the parties to the state court case reached an understanding and agreement as to the settlement of said litigation, which terms were agreed to be and are hereby set forth in this Consent Decree;

IT IS, THEREFORE, agreed by and between the parties as set forth below, and thus DECREED as follows:

1. Defendants having paid to Plaintiffs the full amount agreed upon at the mediation for the settlement of all monetary claims against Defendants in both this action and the aforesaid state

court action, all claims seeking money damages, including attorney's fees, from Defendants in this action are hereby dismissed with prejudice, and said Defendants are fully released and discharged from any money damages with respect thereto.

2. Defendants are permanently enjoined from interfering with the truck route through the Village of South Lebanon agreed upon at the mediation as follows:

- A. From west to east (traveling east through the Village): east on Mason-Morrow-Millgrove Road, right (south) on Main Street, left (east) on Broadway, left (north) on Mary Ellen Street, and right (east) on Mason-Morrow-Millgrove Road.
- B. From east to west (traveling west through the Village): west on Mason-Morrow-Millgrove Road, right (north) on Mary Ellen Street, left (west) on Forest Street, right (north) on High Street, and left (west) on Pike Street to Mason-Morrow-Millgrove Road.

3. Notwithstanding the foregoing, nothing herein shall prohibit the Village of South Lebanon from making normal and necessary repairs to the streets within the Village involving the above agreed-upon truck routes, or from making temporary closures of the aforesaid streets as are necessary for the protection of the public safety, so long as the Village provides for normal temporary detour routes necessary to accommodate such purposes.

4. The provisions of this Consent Decree are not intended to, and are not to be interpreted to, supersede any state or federal laws that may conflict with the provisions hereof.

5. The Village of South Lebanon may not at any time hereafter amend, alter, or relocate the aforesaid west-to-east truck route or the aforesaid east-to-west truck route without the prior written consent of Plaintiff, Carl Oeder & Sons Sand & Gravel, a division of Oeder & Sons Garage,

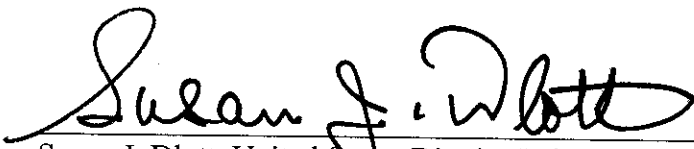
Inc. Provided, however, in the event that changed conditions and/or circumstances beyond the control of the Village of South Lebanon arise in the future which cause the provisions of this Consent Decree to be contrary to the public health, safety, and welfare of the Village of South Lebanon, the Village may petition the Court for relief from the provisions of this Consent Decree to the extent that such provisions are contrary to the public health, safety, and welfare, so long as the Village provides for reasonable alternative means of accommodating truck traffic consistent with the intent and purpose of this Consent Decree.

6. The terms and provisions hereof shall be binding upon and shall inure to the benefit of the parties, their successors, assigns, affiliates, agents, officers, and employees.

7. Any changes, amendments, or revisions to the terms and provisions hereof shall be in writing and shall be agreed upon by the parties.

8. In the event that the Village of South Lebanon violates any of the terms or provisions of this Consent Decree, Plaintiffs shall have the right to enforce such terms or provisions by filing a motion in this action with the Court, and the Court shall retain jurisdiction herein. In such event, the Village of South Lebanon shall be deemed to be in contempt of court, and the Plaintiffs shall be entitled to recover their attorney's fees and expenses related to enforcement of their rights herein.

SO ORDERED.


Susan J. Dlott, United States District Judge

Accepted and Agreed:

PLAINTIFFS:

Carl Oeder & Sons Sand & Gravel,
a Division of Oeder & Sons Garage, Incorporated

By: David Oeder

David Oeder, Vice President

Timothy Browning
Timothy Browning

/s/ Brian P. Barger (see next page)

Jack J. Brady (0010146)

Brian P. Barger (0018908)

Patricia J. Kleeberger (0070068)

Trial Attorneys for Plaintiffs

Brady, Coyle & Schmidt LLP

4052 Holland-Sylvania Road

Toledo, Ohio 43623-2591

(419) 885-3000

(419) 885-1120 - facsimile

Accepted and Agreed:

PLAINTIFFS:

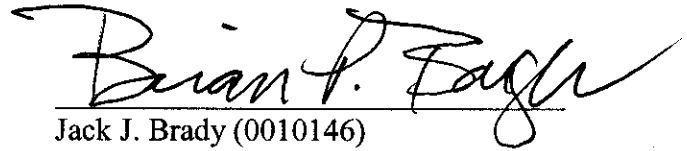
Carl Oeder & Sons Sand & Gravel,
a Division of Oeder & Sons Garage, Incorporated

By: /s/ David Oeder (see prior page)

David Oeder, Vice President

/s/ Timothy Browning (see prior page)

Timothy Browning



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DEFENDANTS:

Village of South Lebanon, Ohio

By: /s/ James Smith (see next page)

James Smith, Mayor,
having been duly authorized by the
Village Council of South Lebanon, Ohio

/s/ James Smith (see next page)

James Smith, Mayor
Village of South Lebanon, Ohio

/s/ Shawn M. Blatt (see next page)

Shawn M. Blatt (0056051)

Trial Attorney for Defendants

Freund, Freeze & Arnold

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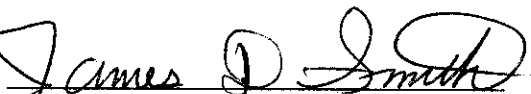
/s/ John Louallen (see next page)

John Louallen, Village Administrator
Village of South Lebanon, Ohio

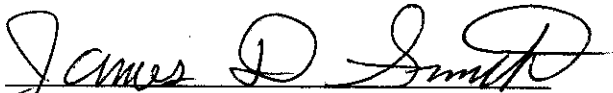
DEFENDANTS:

Village of South Lebanon, Ohio

By:



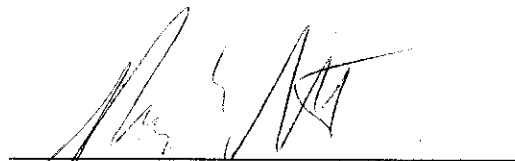
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James Smith, Mayor
Village of South Lebanon, Ohio



John Louallen, Village Administrator
Village of South Lebanon, Ohio



Shawn M. Blatt (0056051)
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